IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

CRL.A.No. 1204 of 2001(A)

CC.676/1999 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA

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APPELLANT: COMPLAINANT:

K.K. RAJAN, S/O.KRISHNAN, AGED 46 YEARS, "MADHAVI NIVAS",. NARAYANA NAGAR, VADAKARA.

BY ADV. SRI.P.M.SAJI
SRI.C.D.SHAJU
SRI.MOHANAN V.T.K.

RESPONDENTS:

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1. E.K.JOSEPH, S/O.KURUVILA, AGED 45 YEARS, PROPRIETOR, THE SKYLARK HARITHA FARM, SUPPLIERS, KUNDUTHORDE POST

2. THE SKYLARK HARITHA FARM, SUPPLIERS, KUNDUTHODE POST, KUTTIADY VIA.

3. STATE OF KERALA, REPRESENTED BY ITS PROPRIETOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.SALIL NARAYANAN
PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10-8-2007, THE COURT ON 10/08/2007 DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl. A. 1204 of 2001

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Dated this the 10th day of August,2007

O R D E R

Appellant was the complainant in C.C.No.676/1999 on the file of the Court of the Judicial Magistrate of the First Class, Vadakara. As per the complaint, the 1st respondent borrowed an amount of Rs.1,05,000/- and in discharge of the above debt, he issued a cheque and when it was presented for encashment, the same was dishonoured on the ground of insufficiency of funds in the account of the 1st respondent. Hence, on complying the provisions regarding notice, reply etc., the complaint has been filed alleging that respondents 1 and 2 had committed an offence punishable under section 138 of Negotiable Instruments Act. To prove the case against respondents 1 and 2, the petitioner himself was examined as PW1 and two other witnesses were examined as PWs.2 and 3 and Exts.P1 to P11 were marked. After closing the evidence adduced by the petitioner, the 1st respondent was questioned under section 313 Cr.P.C. He denied the prosecution allegation and stated that he purchased a bus from one Moosa on bona fide belief that Moosa was the registered owner and it was sold to one Andy. Since father of Moosa had filed a complaint before court sating

that he was the registered owner of the bus, the bus was seized by the police and handed over possession to the father of Moosa. The 1st respondent had entered into an agreement with Andy and towards security of that agreement the 1st respondent issued 5 cheque leaves to Andy and one of the cheque leaves was misused for filing the complaint. Ext.D1 was produced on the side of the defence. After considering the entire evidence, the trial court found that there was no evidence to show that the appellant advanced Rs.1,05,000/- to the 1st respondent and towards discharge of that debt, he issued Ext.P1 cheque and hence an offence under section 138 of the Negotiable Instruments Act was not attracted. Aggrieved by the above, the petitioner has approached this Court by filing the appeal.

2. Heard both sides.

3. The specific contention of the appellant is that the cheque in question was issued by the 1st respondent in discharge of an amount of Rs.1,05,000/- alleged to have been borrowed by the 1st respondent. The trial court found that the appellant was not having any transaction with the 1st respondent and he was acting as a benami for somebody. It has come out in evidence that even though the appellant stated that he used to write the account of the 2nd respondent firm, he was not aware what is the business done by the 2nd respondent firm. The trial court found that the evidence

adduced by PWs.1 to 3 was sufficient to show that the case put forward by the 1st respondent was more probable. The trial court also found that there was no evidence to show that Rs.1,05,000/- was legally due to the appellant from the 1st respondent.

4. On considering the entire evidence, this Court finds that the judgment of the trial court requires no interference by this Court. Hence, the appeal fails and it stands dismissed.

K. Thankappan,
Judge.

K. Thankappan,J.

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Crl.A.1204/2001

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Judgment
10-8-2007